

# **EXHIBIT 13**

Page 1

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 08-99000-smb  
4 - - - - - x  
5 In the Matter of:  
6  
7 ADMINISTRATIVE CASE RE: 08-1789 (SECURITIES INVEST...),  
8 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,  
9  
10 Debtor.  
11 - - - - - x  
12 Adv. Case No. 08-01789-smb  
13 - - - - - x  
14 SECURITIES INVESTOR PROTECTION CORPORATION,  
15 Plaintiff,  
16 v.  
17 BERNARD L. MADOFF INVESTMENT SECURITIES LLC,  
18 Defendants.  
19 - - - - - x  
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15 Plaintiff,  
16 v.  
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18 Defendants.  
19 - - - - - x  
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25

Adv. Case No. 10-05312-smb

- - - - - x

IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

MADOFF,

Plaintiff,

v.

DORON TAVLIN TRUST U/A 2/4/91, et al.

Defendants.

- - - - - x

U.S. Bankruptcy Court

One Bowling Green

New York, NY 10004

December 6, 2016

10:08 AM

B E F O R E :

HON STUART M. BERNSTEIN

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

1 Hearing re: Discovery Conference re Various Letters on  
2 Profit Withdrawal Proceeding

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4 Hearing re: Pre-Summary Judgment Motion Conference Pursuant  
5 to Local Bankr. R. 7056-1

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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6  
7 BY: ANDREW B. KRATENSTEIN

8  
9 ALSO PRESENT TELEPHONICALLY:

10  
11 KEVIN H. BELL

12 PATRICK MOHAN

13 DAVID J. SHEEHAN  
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1 P R O C E E D I N G S

2 THE COURT: Madoff. Good morning.

3 MR. JACOBS: Good morning.

4 MR. KRATENSTEIN: Good morning, Your Honor.

5 Andrew Kratenstein, McDermott Will & Emery on behalf of the  
6 Sage Defendants.

7 THE COURT: Okay. Go ahead.

8 MR. KRATENSTEIN: Your Honor, during discovery in  
9 our adversary proceedings, we asked for production of all  
10 Madoff or BLMIS related statements, deposition transcripts,  
11 what have you. And in their objections, the Trustee said  
12 you can't have the profit withdrawal deposition transcripts  
13 because of Your Honor's order which contained a restriction  
14 on the use, as you know, in anything but the profit  
15 withdrawal proceedings.

16 My understanding, although I haven't been involved  
17 in those proceedings, is that that restriction was put in at  
18 the request of the Picower defendants. That's my  
19 understanding, I don't have firsthand knowledge of that.

20 THE COURT: Well, I do, but go ahead.

21 MR. KRATENSTEIN: All right. So we've got the --  
22 rather than to bring that to Your Honor at the time, I just  
23 got the transcripts elsewhere because they weren't  
24 confidential. So I got them and I read them.

25 And when I read them I read things in them that



1 were relevant to my client's defenses. I read that Bernard  
2 Madoff testified, consistent with his plea allocution, that  
3 the fraud began in 1992 and was limited to the so-called  
4 split-strike strategy. I read -- and that's important to my  
5 clients because my clients had two separate accounts, one of  
6 which was a, what we call, directed trading account, in  
7 which they actually directed Mr. Madoff on what to do, and  
8 then the other account was a convertible bond arbitrage  
9 trading account in which Mr. Madoff also testified that the  
10 convertible bond arbitrage trading was real. So that was  
11 important to me, obviously, and my clients.

12 And then I read Annette Bongiorno's deposition  
13 transcript in which she said she remembered the Sage's  
14 accounts and that they held real securities and substance.  
15 That was important, obviously, to my clients also.

16 So I then went to the Trustee's counsel and I  
17 said, in substance, look, I don't want to have to go and re-  
18 depose Annette Bongiorno to get her to restate what she  
19 already said in this deposition and go to federal -- go the  
20 federal penitentiary, set up a whole protocol, we'll go  
21 through what we went through with Mr. Madoff. I'm happy to  
22 just use this testimony, if you'll allow it. Will you  
23 stipulate? And I'd also like you to agree we can stipulate  
24 to Mr. Madoff's testimony so that Ms. Chaitman, who's going  
25 to -- is sitting here and is going to, as you know, lead,

1 won't have to re-ask all of these questions. And they came  
2 back and said, sorry, no. The judge's order says you can't  
3 use it, you can't use it. And so that's why we're here.

4 THE COURT: Do you disagree that that's what the  
5 order said?

6 MR. KRATENSTEIN: I do not.

7 THE COURT: Okay.

8 MR. KRATENSTEIN: The order says it.

9 THE COURT: So what relief are you seeking?

10 MR. KRATENSTEIN: The relief, I guess, is a  
11 modification of the order to the extent that we think we  
12 should be able to use the transcripts in this proceeding for  
13 a few reasons. First, there's no real prejudice to anybody.

14 THE COURT: But the questions weren't subject to  
15 cross examination.

16 MR. KRATENSTEIN: Well, that could be cured in a  
17 couple of ways. First, with respect to Mr. Madoff, as  
18 everybody knows, that depositions coming up soon. So if the  
19 Trustee wants to ask whatever it wants to ask of Mr. Madoff,  
20 it's free to do so at that deposition. If he says something  
21 inconsistent with the testimony that he gave before, what  
22 have you, people should be allowed to use it to impeach him,  
23 to refresh his recollection, what have you.

24 Mrs. Bongiorno's a slightly -- so they'll have a  
25 full opportunity, with respect to Mr. Madoff to ask him what

1 --

2 THE COURT: Well, wouldn't you also?

3 MR. KRATENSTEIN: Yes.

4 THE COURT: Okay.

5 MR. KRATENSTEIN: So it should be fair game for  
6 all; we're not suggesting otherwise.

7 But to suggest that the profit withdrawal  
8 testimony never occurred, or we can't use it or refer to it,  
9 we think that that goes too far.

10 Second, with respect to Ms. Bongiorno, the Trustee  
11 has said, well, let's hold this all in abeyance; we may have  
12 an omnibus deposition of Ms. Bongiorno as well. To which  
13 our response is, okay, you're of course free to do that and  
14 of course if you want to have us all go to Florida to depose  
15 Ms. Bongiorno in jail, I guess we'll have to go.

16 But you should tell us that now, you should tell us that  
17 soon because the clock is running. I'm happy to just use  
18 your transcript if you'll agree. But if you don't, we'll go  
19 down and you'll have the same opportunity everybody would  
20 that would happen with Mr. Madoff's testimony.

21 So our position is relatively simple. If -- these  
22 transcripts should be used. We shouldn't have to have  
23 another Bongiorno deposition, unless the Trustee wants one.  
24 And if the Trustee wants one, the Trustee can have one but  
25 they should tell us soon. If they don't, we should be able

1 to use the transcript. And if they do, we should be able to  
2 use the transcript and that deposition for -- if she  
3 testifies inconsistently with it. To say we can't use it at  
4 all, that it's -- it just didn't happen, they didn't testify  
5 to this under oath, we think goes too far and would be  
6 unfair. So those are our positions, Your Honor.

7 THE COURT: Okay. Thank you.

8 MR. JACOBS: Good morning, Your Honor. This is  
9 Edward Jacobs on behalf of the Trustee. I think, as you are  
10 aware, the Trustee, historically, had never intended to rely  
11 upon the testimony of Mr. Madoff with respect to his proof  
12 of fraud. That can of worms, so to speak, was opened in the  
13 profit withdrawal hearing when we heard from Mr. Madoff on  
14 the issue of profit withdrawal. And as the Court noted,  
15 there was an order strictly limiting the subject of that  
16 deposition to the profit withdrawal issue.

17 Ms. Chaitman's questions during the course of that  
18 deposition went beyond the scope of the Court allow of the  
19 deposition. There was testimony provided on the start date  
20 of fraud. Subsequently the same thing happened in the  
21 deposition of Ms. Bongiorno, which was also subject to the -  
22 - Your Honor's strict limitation that the subject matter be  
23 limited to profit withdrawal only.

24 In the case of Ms. Bongiorno, her testimony -- she  
25 did provide some specific testimony about the Sage

1 defendants, but it's lacking foundation, there's no context,  
2 it's vague and ambiguous. There's no -- there was  
3 absolutely no cross examination because the Trustee was  
4 prohibited, by court order.

5 THE COURT: But the argument is you can go back  
6 and ask them the questions now.

7 MR. JACOBS: That's right, and that's also true of  
8 Mr. Madoff --

9 THE COURT: Right.

10 MR. JACOBS: -- and all three defense counsel who  
11 are sitting here today and are participating in that  
12 deposition which is set to occur on December 20th.

13 So to make a long story short, Your Honor, once  
14 that -- once Mr. Madoff made those statements about the  
15 start date of the fraud, Ms. Chaitman brought that to the  
16 Court's attention. And notwithstanding the fact that  
17 there's absolutely no evidence to -- in existence that the  
18 Defendants have provided or that we've been able to find in  
19 our records that support his contentions, the Court did  
20 allow a second --

21 THE COURT: Well, you have his allocution and his  
22 testimony.

23 MR. JACOBS: That's correct. But he -- that is  
24 correct, Your Honor.

25 THE COURT: Why would he lie about it?

1 MR. JACOBS: I don't wish to speculate as to why  
2 Mr. Madoff would lie, although we do know for a fact that he  
3 did lie --

4 THE COURT: No, I mean --

5 MR. JACOBS: -- about a great many things.

6 THE COURT: -- about this, though. You know, what  
7 difference does it make?

8 MR. JACOBS: The -- I'm not sure, Your Honor, I'm  
9 purely speculating, but he may have been saying that to  
10 protect certain of his family members who were involved in  
11 the business and engaged in the proprietary trading function  
12 of the --

13 THE COURT: Who? His sons?

14 MR. JACOBS: Yes, Your Honor.

15 THE COURT: His brother's in jail, his sons are  
16 dead, who's he protecting?

17 MR. JACOBS: Again, Your Honor, I'm purely  
18 speculating, I don't pretend to know what's in Mr. Madoff's  
19 mind. But he had a number of family members and employees  
20 working for him for whom he may have felt a need to shield  
21 or protect from criminal liability at some point in time.  
22 And that's -- beyond that, Your Honor, I just -- I wouldn't  
23 wish to comment.

24 So in any event, all three of the Defendants will  
25 be participating in Mr. Madoff's deposition on the 20th.

1 That specifically is about the start date of the fraud, so  
2 they're free to ask any questions they may have. We will be  
3 free and unencumbered in conducting our cross examination  
4 and as I think Your Honor knows, at a recent hearing about  
5 that deposition we specifically told the Court that we  
6 reserved our rights to request additional follow up  
7 depositions after Mr. Madoff gives his testimony, because  
8 yes, we may want to, at that juncture, re-depose Ms.  
9 Bongiorno but we wish to reserve the right to make that  
10 decision until we have the benefit of Mr. Madoff's testimony  
11 because now that there will be a full on examination on  
12 these issues, we're not exactly sure what he may say.

13 So we do expect that there'll be an additional  
14 deposition of Ms. Bongiorno at some place and time and that  
15 will be the appropriate place for the Defendants to examine  
16 Ms. Bongiorno as to her memory as to any of their specific  
17 clients.

18 And as a legal issue, Your Honor, I would point  
19 out that under the prior proceeding rule, it's Federal Rule  
20 of Civil Procedure 32(a)(8), a prior deposition is only  
21 allowed for use in a current litigation where the opponent  
22 had the same motivation to cross examine. And here that  
23 absolutely cannot be the case, because as you know there was  
24 a court order prohibiting us from cross examining that  
25 particular testimony that went outside the bounds of the

1 subject matter of the deposition on that day. Thank you,  
2 Your Honor.

3 THE COURT: I think we're --

4 MS. NEVILLE: Your Honor, may I be heard?

5 THE COURT: Very, very briefly.

6 MS. NEVILLE: Okay. First of all, Carole Neville  
7 from Dentons. The issue here is not only the start date,  
8 it's also the issue of the arbitrage account versus split-  
9 strike conversion. I have five clients who were in that and  
10 when they were transferred to split-strike conversion the  
11 Trustee discounted all of the prior amounts.

12 It seems to me Madoff testified no fewer than five  
13 times that the fraud was limited to the split-strike  
14 conversion. Ms. Brown sat there, she did ask questions, she  
15 asked questions about every issue that was raised. She  
16 didn't restrict it only to profit withdrawal. And so what  
17 the Trustee is trying to do by withholding that transcript,  
18 is to perpetuate a fiction that all of the Madoff accounts  
19 were treated in the exact same way.

20 At some point Your Honor can weigh whether Bernie  
21 Madoff's testimony versus Mr. Dubinsky's expert report  
22 carries more weight, but the transcript was only sealed to  
23 protect the Picowers. None of us knew that Bernie Madoff  
24 had testified that the arbitrage accounts were really  
25 traded. So I don't understand why the Trustee is taking



1 such an effort to perpetuate a fiction to rest a couple a  
2 hundred thousand dollars from some innocent investors. I  
3 think that transcript should be made available for all  
4 purposes, as it normally would have been.

5 THE COURT: All right. The orders that I entered  
6 in connection with both the Madoff and the Bongiorno  
7 depositions were quite clear. Questions shouldn't have been  
8 answered, and the transcripts can only be used in connection  
9 with the profit withdrawal issue.

10 If you -- obviously the issue of when the fraud  
11 began, which is an important issue that's going to be the  
12 subject of a separate deposition -- and the orders specific  
13 limit the depositions because of where they're being taking,  
14 how many people can be in the room and how much time they  
15 can -- that can be allotted to the deposition. So I'm not  
16 going to permit the use of this transcript for anything  
17 other than the profit withdrawal issue.

18 If the difference between a arbitrage account and  
19 a strict-strike account is relevant to that particular  
20 issue, well then it can be used for that purpose, but it's  
21 limited to profit withdrawal, that's all.

22 MR. JACOBS: Thank you, Your Honor.

23 THE COURT: Okay. Ms. Chaitman?

24 MS. CHAITMAN: Helen Davis Chaitman of Chaitman,  
25 LLP.